IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

OP.No. 22654 of 2001(V)

PETITIONER:

P.K.MANOHARAN, S/o. KELAN, PADATH HOUSE,
VADAKKUMPURAM P.O. 683521, VIA ALUVA.

BY ADV. SRI.K.N.NARAYANA PILLAI
SRI.S.VIDYASAGAR

RESPONDENTS:
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1. **STATE OF KERALA REPRESENTED BY ACCOUNTANT GENERAL, ACCOUNTANT GENERAL'S OFFICE, THIRUVANANTHAPURAM.**

2. **DEPUTY DIRECTOR OF EDUCATION, THRISSUR.**

3. **DISTRICT EDUCAITONAL OFFICER, IRINJALAKUDA.**

4. **ASST. EDUCATIONAL OFFICER, KODUNGALLUR.**

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No.36954/2001 IN O.P.No.22654/2001

DISMISSED.

19/07/2007 Sd/- THOTTATHIL B.RADHAKRISHNAN,JUDGE

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE CERTIFICATE DATED 12.9.1967 ISSUED BY THE HEADMASTER, GOVT.M.I.U.P.S. VELIYATHUNADU.

EXT.P1(a): COPY OF THE CERTIFICATE DATED 19.9.67 ISSUED BY THE HEADMASTER, GOVT.N.S.S.L.P.S. CHITTOOR, THODUPUZHA.

EXT.P1(b): COPY OF THE CERTIFICATE DATED 12.9.1967 ISSUED BY THE HEADMASTER, M.I.U.P.S. VELIYATHUNAD.

EXT.P1(c): COPY OF THE CERTIFICATE DATED 15.2.1968 ISSUED BY THE HEADMASTER, M.I.U.P.S. DO.

EXT.P1(d): COPY OF THE CERTIFICATE DATED 31.1.1969 ISSUED BY THE HEADMASTER, GOVT.L.P.S. CHENDAMANGALAM.

EXT.P2: COPY OF THE GOVT.ORDER DATED 22.9.1990 (GOVT. ORDER NO.48172/J2/90/G.EDN.ISSUED BY THE SECRETARY TO THE GOVT. EDN. DEPARTMENT.

EXT.P3: COPY OF THE CIRCULAR NO.52373/J2/93/G.EDN. DATED 6.3.98.

EXT.P4: COPY OF THE LETTER DATED 1.12.97 ISSUED BY THE 4TH RESPONDENT TO THE HEADMASTER, L.F.S.L.P.S LOKEMALESWARAM.

EXT.P4(a): COPY OF THE LETTER ISSUED BY THE 4TH RESPONDENT TO THE HEADMASTER L.F.L.P.S LOKAMALESWARAM TO TAKE STEPS FOR OBTAINING REFUND OF THE PAY AND ALLOWANCE OF THE PETITIONER FOR THE PERIOD FROM 1.3.1993 TO 31.3.19994.

EXT.P5: COPY PF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 4TH RES0PONDENT DATED 8.12.1997.

EXT.P6: COPY OF THE LETTER DATED 4.5.1998 THROUGH THE HEADMASTER, LF.L.P.SCHOOL, LOKAMALESWARAM.

EXT.P7: COPY OF THE LETTER DATED 4.5.1998 ISSUED BY THE 4TH RESPONDENT.

EXT.P8: COPY OF THE COMPARITIVE COMPUTATION OF THE BASIC PAY SCALE FIXED ACCORDING TO REFIXATION AND THE ACTUAL COMPUTATION.

TRUE COPY

P.A. TO JUDGE

THOTTATHIL B.RADHAKRISHNAN,J

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O.P.No.22654 of 2001

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Dated this the 19th day of July, 2007

JUDGMENT

The petitioner entered service of an aided school as a Lower Primary School Assistant on 9.06.1969. Before that, he had different spells of qualified service in different Government Schools as well as in the aided sector. He was granted a higher grade in 1993. At the time of his retirement in 2000, the department took the view that the higher grade was granted reckoning his prior service in the different Government Schools and that such grant of higher grade was impermissible. Resultantly, amounts are recovered from the petitioner.

2. Petitioner impeaches the recovery on two grounds. His first contention is that the grant of higher grade by reckoning his prior service in the Government Schools is in accordance with law. He relies on Ext.P2 Government Order dated 22.9.1990. His second contention is that he, having

enjoyed the benefit of the higher grade, the order for recovery is unjust and it causes hardship. Petitioner has also a different case referable to the fixation of his pension. According to him, the due increments and the entire length of service which are countable for determining the pension have not been properly counted.

3. In terms of Rule 33 Part I of Kerala Service Rules, prior service could be counted for granting increments. However, grant of higher grade is not a matter falling under that Rule. Such issue is regulated by the Government Orders. Even before the petitioner was granted the higher grade in 1993, a situation arose, which require the Government to clarify the effect of the Government Orders and accordingly letter No.54992/J2/91/G.Edn. dated 20.4.1992 was issued by the Secretary to Government in the General Education (J) Department to the Director of Public Instructions categorically stating that the provisional service rendered in the Government Schools cannot be reckoned as qualified service for the purpose

of time bound promotion. That view is in consonance with that rendered by this Court as per judgment dated 24.2.1992 in O.P.No.11293/1991. The reliance placed on Exts.P2 and P3 would be of no use to the petitioner to get over the aforesaid decision of the Government in consonance with the law laid down by this Court. The provision in Ext.P3 that the withdrawal of the Government Orders mentioned in Para 2 thereof would be effective only on 1.10.1994 does not improve the situation because what essentially was dealt with herein was the tagging on of the prior provisional service for the purpose of increment. Under such circumstances, the provisional service of the petitioner in the Government Schools cannot be tagged on to the service rendered in the aided school for the purpose of time bound grade promotion.

4. However, to determine the total length of service for the purpose of pensionable service and for the purpose of counting increment, such service prior provisional service in the Government School have also to be counted in terms of Rule

33 Part I of K.S.R. and the other relevant Rules relating to pension. Therefore, the petitioner is right in contending that he is entitled to have his pension refixed if there is any error in the matter of reckoning the total length of service for the purpose of determining pension, which has to be by reckoning the prior provisional service in the Government Schools also.

5. For the aforesaid reasons, the recoveries, if any, due from the petitioner will depend upon the recalculation of his retirement benefits because if he is entitled to better retirement package, there would be arrear due to him from the Government in that regard. Hence, this writ petition is disposed of by directing that the petitioner will be heard by the DPI in the light of what is stated above and his retiral benefits shall be recomputed to determine whether he is entitled to any more amount to be released from the Government in that regard. If his retirement benefits are refixed any arrear in that account shall be released within a time limit of four months from the date of receipt of a copy of this judgment. In so far as, the question of

granting of higher grade is concerned, even if the petitioner has any grievance, the decision on that shall be in terms of the findings rendered above.

The Writ Petition is disposed of in the above directions.

THOTTATHIL B.RADHAKRISHNAN, JUDGE

dvs